For all these reasons I give judgment for the plaintiff, setting aside the transfer with costs and ordering an enquiry to ascertain the amounts to be paid and offset.

Judgment for the plaintiff.

In re ESTATE OF CHIA ENG SAY, (DECEASED); THE BRITISH MALAYA TRUSTEE & EXECUTOR CO., LTD. v. CHIA KIM LIAN (f) & 2 ORS.

[Orig. Civ. Juris. (Spenser-Wilkinson, J.) May 21, 1951]

[Singapore — Originating Summons No. 123 of 1949]

Distribution — Advancement by Testator — Statute of Distributions — Whether local Customs can be considered in interpreting the Statute — Value of Shares at the time of allotment — Unproductive Shares — Interest.

The question raised in this application was whether or not certain allotments of shares in a private limited company and in a public limited company by the deceased in his lifetime to his sons were to be treated as advancements under the Statute of Distributions. It was admitted that there was no valuable consideration given by the sons on the allotment of the shares to them but it was argued inter alia that in interpreting the Statute of Distributions, regard should be had to the religion and customs of the local inhabitants of the Colony and that in this case consideration should be given to the Chinese custom of preferring sons to daughters.

Held, (1) that in interpreting the Statute of Distributions the Court is not at liberty to consider any contrary customs there may be amongst the local inhabitants; (2) that the allotment of the shares in this case comes within the definition of provision for the sons and the values of the allotments were sufficiently large to raise the presumption that they were in the nature of advances.

Cases referred to:—

(1) *Edwards v. Freeman* 24 E.R. 803 at p. 807.
(2) *Choo Eng Choon v. Neo Chan Neo & Ors.* 12 S.S.L.R. 120.
(3) *Lee Joo Neo v. Lee Eng Swee* 4 Kyshe 325.
(4) *Khoo Hooi Leong v. Khoo Chong Yeo* (1930) S.S.L.R. 127 at p. 137.
(5) *Taylor v. Taylor* L.R. 20 Eq. 155 at p. 157.
(6) *In the matter of the Estate of Abdullah Saleh Shooker, Deceased* O. S. No. 87 of 1948 (Unreported).
(7) *Hatfield v. Minet* 8 Ch. D. 136 at 143.
(8) *In re Davy* (1908) 1 Ch. 61.
(9) *Safeah v. K. Y. Adaykalvan Chitty* 8 S.S.L.R. 102.

ORIGINATING SUMMONS.

N. A. Mallal for the plaintiffs.

T. W. Ong for the defendants.

R. H. Green for Chia Goh Seng who represented the sons and for Chia Teck Soon ordered to be served.

Cur. Adv. Vult.

Spenser-Wilkinson, J. : — This is an application by the British Malaya Trustee & Executor Co., Ltd., as administrators of the estate of Chia Eng Say deceased, for directions as to whether or not certain allotments of shares made by the deceased during his lifetime to his nine sons are to be treated as advancements under the Statute of Distributions and the value thereof brought into hotchpot and, if so, for consequential directions regarding valuation of the shares and the interest, if any, to be added.

On the 26th of July 1940 the deceased formed a private limited company known as Chia Eng Say and Sons Finance Limited with a capital of one million dollars divided into 1,000 shares of $1,000 each and at about the same time he converted his granite quarry business into a public limited company called the Singapore Granite Quarry Ltd. with a share capital of $350,000 divided into 7,000 fully paid up shares of $50 each.

Shares in Chia Eng Say and Sons Finance Limited to the following nominal values were allotted to the deceased's sons :—

Chia Teck Soon	$70,000
Chia Teck Swee	30,000
Chia Teck Beng	40,000
Chia Teck Nia	50,000
Chia Teck Seng	50,000
Chia Gah Seng	30,000
Chia Goh Lee	10,000
Chia Teck Khim	50,000
Chia Teck Leong	30,000

In addition to the above allotments in the private company shares to the nominal value of $10,000 in the Singapore Granite Quarry Ltd. were allotted to Chia Teck Soon and Chia Teck Nia.

At the time when the above shares in Chia Eng Say and Sons Finance Limited were allotted to the sons 600 shares were allotted to the deceased himself and the remaining 40 shares were allotted to three of his grandsons so that all the shares in this company were held by the deceased and his sons and grandsons between them. Although the Singapore Granite Quarry Limited was a public company no invitation was ever issued to the public to subscribe and practically all the shares in this company were allotted between the deceased himself, Chia Eng Say and Sons Finance Limited and the two sons abovementioned. Four shares went to sons-in-law and two to a nephew and 24 out of a total of 7,000 shares went to persons who may or may not have been relatives of the deceased.

In these circumstances both companies can, I think be, fairly described as being family businesses.

The deceased died intestate on the 15th of February 1942 the day upon which Singapore fell to the Japanese. The total value of his estate for estate duty purposes was something over $1,000,000.

It is admitted by or on behalf of six of the sons that no valuable consideration was given by them on the allotment of the these shares to them. The statement appearing in paragraph 10 of the affidavit of Arnold Maurice Pearson filed on the 7th July 1950 that Chia Teck Soon claimed that the $80,000 was given to him by way of remuneration for services rendered was withdrawn at the hearing. Three of the sons disappeared soon after the Occupation and have not been heard of since. The arguments before me were based on the view that all these allotments to the various sons stand on the same footing and for the purposes of this judgment I assume that all were made in similar circumstances — namely that the Intestate paid to the Companies the purchase price of all the shares allotted to his sons (See the affidavit of Chia Teck Soon filed on the 21st October 1950, paragraph 6).

It is contended on behalf of the daughters of the deceased that these allotments of shares by the deceased to his sons amounted to an advancement by the intestate in his lifetime within the meaning of section 5 of the Statute of Distributions. A contrary submission was made on behalf of the sons of the deceased. The relevant part of the Statute of Distributions reads as follows :—

"5. That all Ordinaries and every other person who by this Act is enabled to make distribution of the surplusage of the estate of any person dying intestate, shall distribute the whole surplusage of such estate or estates in manner and form following:
that is to say, one-third part of the said surplusage to the wife of the intestate, and all the residue by equal portions, to and amongst the children of such persons dying intestate, and such persons as legally represent such children, in case any of the said children be then dead, other than such child or children (not being the heir-at-law) who shall have any estate by the settlement of the intestate, or shall be advanced by the intestate in his lifetime, by portion or portions equal to the share which shall by such distribution be allotted to the other children to whom such distribution is to be made: And in case any child, other than the heir-at-law, who shall have any estate by settlement from the said intestate, or shall be advanced by the said intestate in his lifetime by portion not equal to the share which will be due to the other children by such distribution as aforesaid; then so much of the surplusage of the estate of such intestate, to be distributed to such child or children as shall have any land by settlement from the intestate, or were advanced in the lifetime of the intestate, as shall make the estate of all the said children to be equal as near as can be estimated....."

None of the three counsel who appeared before me representing respectively the administrators, the sons and the daughters were able to cite any local case bearing upon the question of advancement under the Statute. Mr. Ong on behalf of the daughters, with great diligence, found an unreported case in which it was thought that the Registrar's Certificate, which was subsequently passed by the Court, had allowed in the accounts for advancements. Further study of this case however revealed that this was a case of advances made by the personal representatives to beneficiaries and had no bearing on the questions now before me in this case.

The absence of any judicial decision on the point was relied upon by Mr. Green on behalf of the sons as an indication that the English rule as to advancement has never been applied in this Colony and is inapplicable to the circumstances of the inhabitants of this Colony. He suggested that either the point had been entirely overlooked in the past or had been considered by both Bench and Bar and had been rejected and he submitted that the latter was the true position. As regards this point I cannot do better than quote from the judgment of the Lord Chief Justice in *Edwards v. Freeman*[1].

"Object. There is no precedent of such a decree. Resp. I believe that is owing to the equality intended by the Act of Parliament, which was understood to be so plain a case, that nobody ever thought it worth while to bring it as a question before the Court....."

The next point raised on behalf of the sons is that the Statute of Distributions should be construed not in accordance with the English decisions upon its wording but in the light of the religion and customs of the local inhabitants of this Colony; and as the family here in question is Chinese it was urged upon me that I ought to take into consideration, in considering the Statute, the Chinese custom of preferring sons to daughters. Mr. Green cited the famous Six Widows' Case *Choo Eng Choon v. Neo Chan Neo and others*[2] as an example of the Courts here having given effect to Chinese custom.

I do not need to consider whether any such custom as was contended for by Mr. Green was or was not sufficiently proved before me because in my view the question of the local interpretation of the Statute of Distributions is a question which is concluded by authority. I need cite only two cases. The first is *Lee Joo Neo v. Lee Eng Swee*[3]. The relevant part of the headnote reads as follows :—

"In distributing the estate of a person dying intestate domiciled here and leaving property here the Statute of Distributions is the only rule and the exclusion of females in sharing according to Chinese Law and Custom will not be recognised."

A similar rule was laid down by the Privy Council in *Khoo Hooi Leong v. Khoo Chong Yeo*[4] where the following passage occurs in the judgment of the Court :

"On the other hand daughters are admitted to share on an intestacy, in other words, the Chinese custom which excludes females from sharing in the estate of a Chinese intestate does not apply in the Straits Settlements. (**Lee Joo Neo v. Lee Eng Swee**); or to state the position in other language the English Law of succession is not modified in its application to Chinese residents in the Colony by incorporating the Chinese custom of excluding females."

Upon these authorities I am of opinion that the Statute lays down the law on this subject and that in interpreting the Statute I am precluded from considering any contrary customs there may be amongst the local inhabitants.

Mr. Green further argued that, even if I am not to be guided by local Chinese custom, yet I must take all the circumstances into consideration in deciding whether these particular transactions do or do not amount to advancements under the Statute; that the general circumstances in this Colony are so different from the circumstances in England that I should not follow too closely the decisions of the English Courts which have laid down principles suitable for Christian people in a Christian country; that the presumptions made by the Courts in England should not necessarily be made here; and that section 115 of the Evidence Ordinance which governs the question of presumptions in this Colony, does not permit the kind of presumption that has been made in England. I am unable to accept this view. The principles of equity, equally with the common law, apply to this Colony and if I am not to be guided by the English authorities and the established rules of equity what rules of interpretation am I to turn to in construing an English Statute which has been interpreted mainly by Courts of Equity?

The law as to what constitutes an advance is set out in Vol: 11 of Halsbury's Laws of England, paragraph 39 at page 20, as follows :—

"39. In determining what payments are to be deemed payments by way of advancement and brought into hotchpot, a distinction is drawn between sums given as casual payments or to relieve a child from temporary difficulties, and sums given to start a child in life or make a provision for him. The latter only are to be deemed advances by way of portion; but if the gift is of large amount there is a **prima facie** presumption that it is given by way of portion. No general rule can be laid down as to what is and what is not to be considered a portion, for the time and manner of the gift have in every case to be considered. Payments for education or maintenance, or apprenticeship, or gifts of jewellery or clothing, or annual allowances, are not advances....."

In my opinion this passage correctly sets out the law which must be applied in the present case.

But it is suggested by Mr. Green that in all the English Cases the details and purpose of the payments which have been held to be advancements were clearly ascertained whereas in the present case the only fact we have is the fact of the allotment of these shares, and there is no evidence as to the circumstances under which these allotments were made or of their purpose. This argument, however, appears to me to be double edged. It is true that there is no positive evidence that these allotments were actually intended by the intestate as advancements; but on the other hand there is no evidence of their being made for any other purpose. An allotment of shares of this kind is not compatible with a provision for maintenance or education, nor is there any question here of annual allowances, apprenticeships or gifts of jewellery or clothing. The rule laid down in the English Cases (especially *Taylor v. Taylor*[5]) that if, in the absence of evidence, you find a father giving a large sum to a child in one payment there is a presumption that that is intended to start him in life or make a provision for him appears to me a reasonable presumption which it would be proper for the Court to make under section 115 of the Evidence Ordinance.

The following passage from the judgment of Jessel, M.R. in *Taylor v. Taylor* is, in my opinion, a very valuable guide. He says :—

"You may make the provision by way of marriage portion on the marriage of the child. You may make it on putting him into a profession or business in a variety of ways: you may pay for a commission, you may buy him the goodwill of a business and give him stock-in-trade; all these things I understand to be portions or provisions."

Following the indications given by that judgment it appears to me that the allotment of these shares amounts to the kind of "provision" there referred to; and the values of these allotments are, in my view, sufficiently large to raise the presumption that they were in the nature of advancements. I am, therefore, of opinion that these allotments were advancements within the meaning of the Statute.

With regard to the value to be placed upon these shares it seems to me that as the substance of the transactions was that the father provided the funds necessary to purchase these shares the sons stand in the same position as they would have done if they had been given the money and had bought the shares. The value, therefore, must be the nominal value of the shares at the time of the allotment.

The next question is that of interest. The normal rule in England is that interest must be added to the amount of the advance at the rate of 4 per cent from the date of death. In this case both parties contend for a modification of this rule. On the one hand it is contended on behalf of the daughters that the local rate of interest, equivalent to the English 4 per cent is 6 per cent; and on behalf of the sons it is contended that the circumstances of the Japanese Occupation

render it inequitable that interest should run during that period.

This brings me to prayer 5 in the application now before me which raises the question whether either the Debtor and Creditor (Occupation Period) Ordinance or the Moratorium Proclamation (Repeal) Ordinance applies to these advances. It was not seriously contended that these advances could be brought even within the extended definition of "debt" contained in the Moratorium Proclamation. In my opinion there is no debt because there is no obligation of any kind for any one to pay this money. The sons have a right of election as to whether they will be content with what they have already had or whether they will claim their share in the estate and bring in what they have already had and account for it. As in my opinion, there is here no debt in the normal sense nor any claim for payment of money it follows that the Moratorium Proclamation (Repeal) Ordinance can have no application in this matter. Similar considerations apply to the Debtor and Creditor (Occupation Period) Ordinance.

I have to consider, however, whether, in all the circumstances of this particular case, it would be equitable to insist upon the usual rule of adding interest to the advances as from the date of the death. An unreported case decided in August, 1948, was cited to me (*In the matter of the Estate of Abdullah Saleh Shooker, Deceased*[6]. That was the case of a legacy which is expressly covered by Order 52 rule 60 of the Rules of the Supreme Court. Jobling, J. held that the executors should pay interest on the legacy at 6 per cent per annum from a date one year after the testator's death. In coming to that conclusion, however, he was influenced by the fact that the assets of the estate were producing some interest and probably some other income and he gave this as one of the reasons for his decision. It appears from the affidavits before me in the present case that the shares in question produced no income during the Japanese Occupation. The Granite Company has paid dividends since the Occupation, whilst the other Company has not. I think it is reasonable to suppose that these Companies were unproductive during the Occupation as a result of that Occupation. In cases covered by the Moratorium Proclamation (Repeal) Ordinance it is provided that no interest should run during the Occupation Period and that interest should only recommence from the 1st April 1946. I think it would be inequitable for the sons, whose shares were unproductive during the occupation period, to have to add the usual interest to their advances as from the date of the death. As was pointed out by James, L.J. in *Hatfield v. Minet*[7] it is the duty of the Court to have regard to all the circumstances to ascertain what really is an equal division of the estate between the children. I think my proper course is to follow, by analogy, the provisions of the Moratorium Proclamation (Repeal) Ordinance and to order that interest on the advances shall run from the 1st of April 1946.

There remains the question of the rate of interest. I think there can be little doubt that for most purposes the English rate of interest of 4 per cent is replaced in this Colony by the local rate of 6 per cent. Rules 58, 59 and 60 of Order 52 of the Rules of the Supreme Court, which provide for interest in proceedings in Chambers on the Equity side, all lay down 6 per cent per annum as the rate; and those rules are the exact equivalent of the English Order 55 Rules 62, 63 and 64 which lay down 4 per cent. In *In re Davy*[8] it was argued that interest on advances ought to follow the same rule as is established in the case of legacies and this argument appears to have been upheld. There is no doubt that 4 per cent is the proper rate to be added to advances in England and I am of opinion that the local equivalent of this is 6 per cent, and that this is the correct rate to be added in this Colony to advancements under the Statute of Distributions. As, however, I am following, by analogy, the provisions of the Moratorium Proclamation (Repeal) Ordinance, I shall order that in this case interest shall be added to the advances at the rate of 4½ per cent per annum from the 1st April 1946 to the 1st of October 1949 and at the rate of 6 per cent thereafter.

Since the hearing of this application my attention has been directed to the case of *Safeah v. K. Y. Adaykalavan Chitty*[9] which lays down that the English Law as to the presumption of advancement prevails in this Colony, notwithstanding that the parties concerned are Mohammedans. That, however, was not a case of alleged advancements under the Statute of Distributions but one of that class of case where a purchase, which would normally raise a resulting trust, does not do so where the purchaser is the child of the person who advances the money and a presumption of advancement arises. The case may be of interest by analogy, but is not in my opinion an authority upon the particular point I have to decide under the Statute and does not affect my decision in this case or the reasons upon which it is based.

Order accordingly.

Re MOTOR TRADERS FINANCE CO., LTD.

[Criminal Revision (Brown, Ag. C. J.) May 3, 1951]

[Singapore — Criminal Revision No. 1 of 1951]

Opium and Chandu Proclamation (No. 43) s. 17(1) — Opium concealed in motor vehicle — Forfeiture — Motor-vehicle loaned to accused by hire-purchaser — Guilty knowledge of hire-purchaser.

The Motor Traders Finance Co., Ltd., the petitioners in this case entered into a hire-purchase agreement with one Tan Swee Loh, who lent the car to the accused. The accused was convicted on a charge of being in possession of opium contrary to the provisions of section 3 of the Opium and Chandu Proclamation, and the learned Magistrate, exercising the discretion which is given to him by section 17(1), made an order for the forfeiture of the car. The petitioners were innocent of any complicity in the offence, but Tan Swee Loh was not. And the learned Magistrate found as a fact that Tan Swee Loh was aware of the use to which the car was going to be put.

Held, distinguishing the cases of **Cheng Kee Huat v. Public Prosecutor**[1] and **Public Prosecutor v. Goh Ah Moi**[2] that under the circumstances and in view of the guilty knowledge of the hire-purchaser, the learned Magistrate had exercised his discretion properly.

Cases referred to:—

(1) *Cheng Kee Huat v. Public Prosecutor* (1948) M.L.J. 53.
(2) *Public Prosecutor v. Lim Geok Ching* (1949) M.L.J. 154.

CRIMINAL REVISION.

M. B. Brash for the petitioners.
E. P. Shank (D.P.P.) for the Crown.

Brown, Ag. C.J. : — The petitioners, the Motor Traders Finance Co. Ltd., entered into a hire-purchase agreement with one Tan Swee Loh, who lent the car to the accused. The accused was convicted on a charge of being in possession of opium contrary to the provisions of section 3 of the Opium and Chandu Proclamation, and the learned Magistrate, exercising the discretion which is given to him by section 17(1), made an order for the forfeiture of the car. The petitioners were innocent of any complicity in the offence, but Tan Swee Loh was not. And the learned Magistrate found as a fact that Tan Swee Loh was aware of the use to which the car was going to be put.

This case must be distinguished from the two cases which were cited of *Cheng Kee Huat v. Public Prosecutor*[1] and *Public Prosecutor v. Lim Geok Ching*[2]. In both those cases the person who was in possession of the vehicle was also the owner, and the offence was committed by an employee without his knowledge. In this case the person who was in possession of the vehicle was not the owner but the hirer under a hire-purchase agreement, and he had guilty knowledge. There can be no doubt that if he had been the owner the learned Magistrate's discretion would have been properly exercised.

The amount remaining to be paid by the hirer under the hire-purchase agreement was $736. And I was concerned to see that in penalising the guilty hirer by forfeiting the car the innocent owners should not also be penalised by the loss of this sum which remained due to them under the agreement. For this purpose the hearing of this Revision was adjourned part heard in order that the hire-purchase agreement might be produced so that it might be seen what, if any, remedy the owner would have against the hirer for the recovery of this sum.

By clause 4 of the Agreement the hirer agrees that "he will not during the hiring use or permit to be used the vehicle in contravention of any Statute, Ordinance, Enactment or regulation for the time being in force or in any manner by reason of which the vehicle may become liable to seizure, confiscation or forfeiture." The hirer has committed a breach of the Agreement under this clause and has rendered himself liable to an action for damages.

I have considered the possibility of the hirer being a man of straw, from whom the damages awarded might not be recoverable. Clause 13 of the Agreement afforded the opportunity for the owners to require a guarantor, of which they did not avail themselves. Subject to this possibility, the owners will be able to recover the balance of the money which remains due to them under the Agreement, and I therefore see no reason to quash the order of forfeiture which the hirer has brought upon himself.

Order accordingly.

Note:— The Opium and Chandu Proclamation was repealed by section 49 of Ordinance No. 7 of 1951. With regard to Forfeiture of Drugs etc., see section 30 of this Ordinance. — *Ed. M.L.J.*

TENG YENG v. N.KR. ARUNASALAM CHETTIAR.

[Orig. Civ. Juris. (Hill, J.) June 27, 1951]

[Ipoh — Civil Suit No. 374 of 1950]

An example of a Case where the Court held that the plaintiff's claim was misconceived and dismissed the same with cost.

CIVIL SUIT.

K. C. Chan for the plaintiff.
M. S. Mahendran for the defendant.

Hill, J. : — This matter was adjourned to enable me to consider whether the plaint disclosed a cause of action.